1-1998

The New Singapore Law on Antidumping and Countervailing Duties

Locknie HSU
Singapore Management University, lockniehsu@smu.edu.sg

Published in Journal of World Trade, 1998, Vol. 32, Issue 1, pp. 121-137.

The New Singapore Law on Antidumping and Countervailing Duties

Locknie HSU*

I. INTRODUCTION

The Countervailing and Anti-dumping Duties Act 1996 ("the Act") came into effect on 1 November 1996.[1] This legislation was enacted to bring Singapore's law in relation to countervailing duties, subsidies and antidumping into conformity with requirements of the World Trade Organization (WTO) Agreements.[2] It also updates the law by repealing the outmoded Customs (Subsidies and Anti-dumping) Act.[3] The new rules and procedures in the Act are meant to "give added assurance and certainty to the local and foreign parties concerned whenever an action is instituted".[4] In addition to the Act, detailed regulations have also been passed.[5]

The Act follows the basic requirements of the Antidumping and Subsidies Agreements closely, but also includes supplementary provisions. Part II of the Act deals with the area of countervailing duties in relation to subsidies. Part III deals with antidumping. Most of the provisions in Part II have parallel, if not identical, provisions in Part III. Many of the provisions are adapted from those in Malaysia's Countervailing and Anti-Dumping Duties Act 1993 ("the Malaysia Act").[6] This article will examine the administration of the Act, the antidumping and subsidy provisions, the review process and a number of other general issues.

II. ADMINISTRATION OF THE ACT

The primary authority in charge of administering the Act lies with the Minister for

* LL.B. (NUS), LL.M. (Harv.) Advocate and Solicitor, Singapore; Senior Lecturer, Faculty of Law, National University of Singapore.

[1] Chapter 65B, 1997 Rev. Ed. Notice of commencement of operation is found in subsidiary legislation, s. 466/96. See the comparative table of provisions annexed to Singapore's Countervailing and Anti-dumping Duties Bill No. 24 of 1996.

[2] The agreement governing antidumping is the Agreement on Implementation of art. VI of the General Agreement on Tariffs and Trade (GATT) 1994, as adopted in the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations, Marrakesh, 15 April 1994 ("the Antidumping Agreement"). The agreement governing subsidies and countervailing duties is the Agreement on Subsidies and Countervailing Measures ("the Subsidies Agreement").

[3] Cap. 71, 1985 Rev. Ed.

[4] Minister for Trade and Industry, at the Second Reading of the Countervailing and Anti-dumping Duties Bill, Official Reports of the Parliamentary Debates, Singapore, 1 October 1996, Vol. 66, No. 7, p. 583.

[5] The Countervailing and Anti-dumping Duties Regulations 1997, s. 207/97, which came into operation on 25 April 1997 ("the Regulations").

[6] See the comparative table of Singapore and Malaysian provisions annexed to the Bill.

Trade and Industry.[7] He makes not only preliminary and final determinations as to whether antidumping or countervailing duties should be imposed, but also the decision whether to proceed with an investigation in the first place.

The Act also establishes an Antidumping Tribunal for review of the Minister's decisions.[8] As will be seen later, the Tribunal has limited powers. It comprises a chairman and no more than two other members. All members are to be appointed by the Minister, who also decides their remuneration and other terms and conditions of appointment. Each may hold office for up to three years as may be determined by the Minister. Reappointment is allowed.

A provision which does not appear in the Malaysia Act is Section 31. The Section allows the Minister to delegate, to another, all or any of his powers and functions under the Act or related Regulations.

Section 32 provides that the Act is to be "construed as one with the Customs Act", but that in the event of any inconsistency between the two, the provisions of the Act will prevail. The Section gives any customs officer all the powers conferred by the Customs Act in relation to any countervailing and antidumping duties imposed under the Act.[9]

The provisions relating to antidumping will be examined first.

III. Antidumping Provisions

Part III of the Act deals with antidumping. The structure of the legislation in this Part will be more readily understood by use of the following subheadings in this discussion:

- procedure;
- substantive provisions.[10]

A. Procedure—Antidumping Investigations

1. *Initiation of an Investigation*

There are two ways in which an antidumping investigation may be initiated under the Act. The first is through a petition by any person acting "on behalf of the domestic industry producing like goods" as the subject goods. This is provided for in Section 19. The second is where the Minister himself decides to initiate an investigation on his "own accord". This may be done "in special circumstances" (not defined) under Section 19(6).

---

[7] An exception exists in the area of establishment of the Antidumping Tribunal under s. 30, where the Minister responsible for law is given charge.

[8] Although called the "Antidumping Tribunal", it is also empowered to make determinations in respect of subsidies—s. 30(1). It has the same powers of review in both areas.

[9] Explanatory Statement, Bills Supplement No. B 24 of 1996.

[10] The same subheadings will be used in the subsequent discussion of subsidies and countervailing duties.

In the first situation, the Act sets out in detail the manner in which the matter is to proceed once a petition to the Minister has been made. Much of the process is simply a straightforward adoption of the terms required under the Antidumping Agreement. The legislation faithfully reproduces much of the language of the Agreement. The chart in Appendix 1 below sets out the procedure which follows submission of a petition. The contents required of a petition can be found in Regulation 3 of the Regulations.

Once a petition is received, the Minister is directed under Section 19(3) to review the petition and "other available information". The objective is to see if there is "sufficient evidence to warrant an investigation into whether the elements necessary for the imposition of an anti-dumping duty ... under Section 14(1) exists", and whether such an investigation is "in the public interest". In other words, the evidence sought, at this point, is not that which proves conclusively that an antidumping duty is called for, but that it warrants an investigation of the same. What is in the public interest is not defined in the Act.

The Act does not define "sufficient evidence"; it would appear to be for the Minister to decide as a matter of discretion.[11] If he determines that there is such evidence and that an investigation is in the public interest, Section 19(5) requires that he notify the interested parties and publish a notice of initiation of investigation. However Section 19(8) should be noted, as it provides that, notwithstanding any provision in Section 19, an investigation is not to be initiated unless the Minister also determines that there is sufficient support by domestic producers of like goods.[12]

The Minister may issue questionnaires within a reasonable period from the date of publication of the notice of initiation of investigation, and the recipient of such a questionnaire has at least 30 days from receipt to reply.[13]

Under Section 2(2), an investigation must be terminated immediately if the margin of dumping is found to be *de minimis*, or if the volume of imports of the subject goods (actual or potential), or the injury, is found to be negligible.[14]

It should be noted that where in the course of an antidumping investigation or review, the Minister discovers practices which appear to be dumping, but were not included in the matters alleged in the petition, he may, if there is sufficient time, also investigate those practices.[15]

---

[11] Art. 5.2 of the Antidumping Agreement provides some guidance. Art. 6 applies to evidence required once an investigation is initiated. See also reg. 6.

[12] Such support, set out in s. 19(8)(a) and (b), is identical to the criteria in art. 5.4 of the Antidumping Agreement.

[13] Reg. 9.

[14] Section 24(3) adopts the yardsticks in art. 5.8 of the Antidumping Agreement on what margin of dumping is *de minimis* and what volume of imports or injury is negligible. Reg. 25(2) further states that, for the purposes of determining whether the volume of imports is negligible under s. 24(3)(b) of the Act, the Minister is to consider only subject goods that are found to be dumped.

[15] Section 38(1). A similar provision exists for subsidy investigations and reviews, in s. 38(2).

2. *Time Limits*

Section 20 provides that, except in special circumstances, all antidumping investigations are to be concluded by the Minister within one year, and in no case more than 18 months after initiation.[16]

Further time limits are found in the Regulations. Regulation 6, for instance, provides that the Minister is to examine the accuracy of the evidence in a petition within 30 days from the receipt of the petition.

Regulation 10 states that a preliminary determination by the Minister under Section 21 of the Act must be made within 90 days from the date of publication of the notice of initiation investigation. This may be extended by an additional period not exceeding 90 days.

Regulation 13(2) provides that a final determination under Section 23 of the Act is generally to be made within 180 days from the date of publication of the notice of preliminary determination.

With respect to undertakings, Regulation 14(3) states that they are to be offered not later than 60 days before the final determination.

With respect to reviews by the Minister, Regulation 36(1) provides that such a review is normally to be undertaken not earlier than one year after the date of publication of the determination or decision of which the review is sought. Such a review by the Minister is to be completed normally within 180 days from the date of publication of the notice of initiation of the review, but it is not to extend beyond one year from that date.

Where imports from more than one country are the subject of an antidumping investigation, Regulation 20 allows the Minister to assess the effects of such dumped imports cumulatively, in order to determine if injury exists. It must, however, be shown that the petitions were filed simultaneously, the amount of dumping in relation to imports from each country is more than *de minimis*, the volume of imports from each is not negligible,[17] and that such cumulative assessment is "appropriate in the light of the conditions of competition between the imported goods and the conditions of competition between the imported goods and the like domestic goods".

Finally, Regulation 39 provides that publication of a notice of an impending termination of the imposition of an antidumping duty must take place at least six months prior to the end of the five-year period referred to in Section 26(7) of the Act.

B. SUBSTANTIVE PROVISIONS—ANTIDUMPING

Once an investigation is initiated, the Minister has to determine if there is evidence of existence of dumping so as to warrant the imposition of antidumping duties. Prior to this, there are several matters he has to consider.

---

[16] This follows art. 5.10 of the Antidumping Agreement.

[17] As required under s. 24(3)(a) and (b). See also reg. 25(2).

1. *Criteria for the Finding of Antidumping—The General Requirements*

Under Section 14(1), the following are prerequisites for the imposition of any antidumping duty:

(a) the export price of the subject goods is less than the normal value;
(b) injury is found to exist because the subject goods are, through the effects of dumping:
    (i) causing material injury to the domestic industry in Singapore producing like goods;
    (ii) threatening to cause material injury to the domestic industry in Singapore producing like goods;
    (iii) causing material retardation of the establishment of the domestic industry in Singapore.[18]

Section 21 requires the Minister to assess these issues in making a preliminary determination. While the Act does not define "material injury", guidance may be obtained from Article 3 of the Antidumping Agreement.

The Regulations contain further guidelines as to the determination of injury.[19]

In addition, Section 14(3) requires causation to be proved in the following ways:

(a) demonstration that the subject goods are causing injury within the meaning of the Act;
(b) demonstration of a causal relationship between the subject goods and the injury to the domestic industry, to be based on an examination of all relevant evidence before the Minister;
(c) an examination by the Minister of any known factors other than the subject goods which at the same time are injuring the domestic industry, with the injuries caused by such other factors not to be attributed to the subject goods.[20]

The "dumping margin" is defined in Section 2(1) as "the amount by which the normal value of the subject goods exceeds the export price". Regulation 31 gives details as to the computation of the dumping margin. Regulation 35 deals with the dumping margin to be established in the case of goods from a non-market economy. Regulation 33 allows the Minister to limit his examination to a reasonable number of parties or of subject goods where the parties or types of goods are too large.

---

[18] Under reg. 18, determination of material retardation is to be based on the Minister's determination, built on the fact that:

(a) a domestic industry producing the like goods is in the process of being established;
(b) such an industry is viable;
(c) the establishment of such an industry is imminent;
(d) the dumped imports are, through the effects of the dumping, materially retarding the establishment of such an industry.

The Minister is to consider "among others, factors such as feasibility studies, negotiated loans and contracts for the purchase of machinery aimed at new investment projects or the expansion of existing plants and whether there has been significant investment for the establishment of such an industry".

[19] Regs. 15–20. Many of the factors which assist in the determination of injury are drawn from art. 3 of the Antidumping Agreement.

[20] Much of this language is taken from art. 3.5 of the Antidumping Agreement.

"Normal value" is defined in Section 15(1) as the "comparable price actually paid or payable in the ordinary course of trade for like goods sold for consumption in the domestic market of the exporting country". Regulation 27 elaborates on the normal value determination process.

The "export price" is defined in Section 16(1) as "the price actually paid or payable for the subject goods".

Regulation 26 provides that, for the determination of normal value and export price under Sections 15 and 16, the Minister is normally to examine sales "during the one-year period preceding the initiation of an investigation". The Minister may, however, examine sales during any additional or alternative period if he "thinks appropriate, if such sales permit a proper comparison".

Section 17 adopts the requirements in Article 2.4 of the Antidumping Agreement. A "fair comparison" of the normal value and the export price is to be made. Due allowance is to be made in each case on its merits for differences which affect price comparability. This means comparison at the same level of trade, normally at the ex-factory level, and in respect of sales made at as near as possible the same time. In addition, Section 17(3) requires that, generally, such a comparison be made using a weighted average normal value with a weighted average of export prices.[21] Regulation 32 should also be noted, as it allows the Minister to make certain adjustments to ensure such a fair comparison.[22]

2. *Variations*

Certain variations from the normal situation, anticipated by the Antidumping Agreement, have been incorporated into the Act.

(a) *Variations in normal value computation*

Where there are no sales in the domestic market of the exporting country or the volume of sales is low—Section 15(2)—then the comparable price paid or actually payable in the ordinary course of trade for like goods exported to any appropriate third country, or a constructed value, is to be used.[23] Such a constructed value is dealt with in Section 15(2)(b) and (5).[24] Regulation 28 elaborates on the selection of such a third country and Regulation 29 elaborates on the determination of cost of production and a constructed value.

---

[21] See art. 2.4.1 of the Antidumping Agreement.

[22] These include reasonable allowances for transport expenses to ensure comparison of ex-factory prices, for *bona fide* differences in selling conditions of the sales compared, for differences in the physical characteristics of the goods compared, etc.

[23] From art. 2.2 of the Antidumping Agreement.

[24] Section 15(2)(b) requires the constructed value to include the cost of production in the exporting country plus a reasonable amount for profits. Under s. 15(5), the cost of production is to be computed on the basis of all fixed and variable costs of manufacturing for sale in the exporting country plus a reasonable amount for sales, administration and other general expenses.

Under Section 15(4), sales of like goods in the domestic market of the exporting country or sales to a third country which are below per unit cost of production may be treated as not being in the ordinary course of trade and may be disregarded in determining normal value only if the Minister determines that such sales are made within an extended period of time in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable period of time.[25] However, Section 15(6) provides that the normal value of subject goods may, in such circumstances, be determined on the basis of:

(a) the remaining sales in the domestic market made at a price not less than the cost of production, provided that such remaining sales are in sufficient quantities;

(b) where the sale does not exist in sufficient quantities in the domestic market, the remaining sales in the third country market made at a price which is not less than the cost of production, provided that such remaining sales are in sufficient quantities.[26]

(b) *Variations in export value computation*

Under Section 16(2), where there is no export price or where there is an association or a compensatory agreement between the importer and a third party and the price actually paid or payable appears unreliable, the export price may be constructed on the basis of the price at which the subject goods are first resold to an independent buyer or, if the subject goods are not resold to an independent buyer or not resold in the condition imported, on any reasonable basis.[27]

(c) *Non-market economy country of origin of goods*

Such a country is defined in Section 2(1) as "any foreign country the government of which has a complete or substantially complete monopoly of its trade and where domestic prices are fixed by the government of the foreign country". Under Section 18, the normal value in such cases is to be determined in "the prescribed manner".[28]

IV. Subsidy Provisions

As mentioned above, many provisions pertaining to subsidy investigations are

---

[25] From art. 2.2.1 of the Antidumping Agreement. Reg. 30 provides further assistance in applying s. 15(4); it states that the extended period of time is normally one year, but in no case to be less than six months. It further provides a guide as to what amount to sales below per unit costs made in substantial quantities, and recovery of costs within a reasonable period of time.

[26] Section 17(7) further provides that, where the remaining sales are not in sufficient quantities for the calculation of the normal value—s. 17(6)—then the normal value of any subject goods may be determined on the basis of the constructed value under s. 17(2)(b).

[27] From art. 2.3 of the Antidumping Agreement.

[28] Reg. 35 provides guidelines as to the calculation of the dumping margin for non-market economies.

mirrored by those relating to antidumping investigations. Some of the differences are highlighted in this section.

A. PROCEDURE—SUBSIDY INVESTIGATIONS

Appendix 2 below sets out the procedure for subsidy investigations. Much of it resembles the procedure relating to antidumping investigations, discussed above.[29]

A feature applicable to subsidy investigations, which does not apply to antidumping investigations, is that before initiating a countervailing duty investigation, the Minister is to provide any interested foreign government with an "opportunity for consultation for the purpose of clarifying matters relevant to the investigation and arriving at a mutually agreed solution".[30]

Under Section 10, an investigation must be terminated immediately if the Minister determines that the amount of subsidy is *de minimis*, or that the volume of subsidized imports (actual or potential) or the injury is negligible.[31]

As for antidumping investigations, cumulative assessment of effects of subsidized imports may be carried out by the Minister in appropriate cases.[32]

Time limits

Section 6 provides that, except in special circumstances, all countervailing duty investigations are to be concluded by the Minister within a year, and in no case more than 18 months after initiation.[33] Other time limits have been mentioned above in the discussion relating to antidumping.

B. SUBSTANTIVE PROVISIONS—SUBSIDIES AND COUNTERVAILING DUTIES

The criteria for the imposition of a countervailing duty are set out in Section 3. The Minister must determine that:

---

[29] See arts. 11 and 12 of the Subsidies Agreement.

[30] Section 5. This implements the consultation option provided to Members in arts. 4, 7 and 13 of the Subsidies Agreement. Arts. 4 and 7 further allow a Member country to refer the matter to the dispute settlement body for the establishment of a panel, if the consultations do not yield a mutually agreed solution.

[31] The percentage in art. 11.9 of the Subsidies Agreement for what is *de minimis* has not been included in the section. Section 10(3) states that:

(a) the amount of countervailable subsidy is to be considered *de minimis* if the amount is less than the "prescribed percentage, expressed as an *ad valorem* percentage";

(b) the volume of subsidized imports is to be regarded as negligible if the volume of subsidized imports from a particular country is found to account for less than the prescribed percentage of the imports of the like goods into Singapore.

However, reg. 24 provides the details—a countervailable subsidy expressed in the form of an *ad valorem* subsidy of less than one percent is *de minimis*. Where the country of export is a developing country (but not within para. (2), i.e. is neither a WTO Member country which has eliminated export subsidies before 1 January 2003, nor a Member country referred to in Annex VII of the Subsidies Agreement), such an *ad valorem* amount of not more than two percent is *de minimis*. Finally, where the country of export is a developing country within para. (2), an *ad valorem* countervailable subsidy of three percent is *de minimis*.

[32] Reg. 19.

[33] As required by art. 11.11 of the Subsidies Agreement.

(a) a countervailable subsidy[34] is being provided with respect to the subject goods;
(b) injury is found to exist because the subject goods are, through the effects of the subsidy:
    (i) causing material injury[35] to the domestic industry in Singapore producing like goods;
    (ii) threatening to cause material injury[36] to the domestic industry in Singapore producing like goods;
    (iii) causing material retardation[37] of the establishment of the domestic industry in Singapore.

With respect to causation,[38] the Section goes on to state that:
(a) it must be demonstrated that the subject goods are causing injury within the meaning of the Act;[39]
(b) the demonstration of a causal relationship between the subject goods and the injury to the domestic industry is to be based on an examination of all relevant evidence before the Minister;
(c) the Minister is to also examine any known factors other than the subject goods which at the same time are injuring the domestic industry, and he should establish that the injuries caused by these other factors cannot be attributed to the subject goods.

These provisions mirror the provisions mentioned above relating to antidumping. A subsidy within the terms of Section 2(4) is not countervailable.[40]

For goods exported by non-market economies, Regulation 34 provides that "no countervailing duty is to be applied to such goods under any programme to the extent that the Minister determines that it is impracticable, because of the nature of the non-market economy, to determine a countervailable duty rate".

V. Antidumping and Countervailing Duties and Other Measures

A. Duties

Section 14(2) states that the antidumping duty to be imposed shall be:
(a) equal to the dumping margin[41] determined to exist with respect to the subject goods;

---

[34] The meaning of "subsidy" is given in s. 2(2) This follows art. 1.1 of the Subsidies Agreement, except that art. 1.1(a)(1)(iv) has been omitted from the Act.
[35] See reg. 15.
[36] See reg. 17.
[37] See reg. 18.
[38] See reg. 16.
[39] See also ss. 7 and 9.
[40] Section 2(4) refers to the non-actionable subsidies in arts. 8.2(a)–(c) and 8.3 of the Subsidies Agreement. The provisions on specificity in arts. 2 and 8.1 have been incorporated by reg. 21.
[41] Reg. 31 further provides guidelines on the establishment of the dumping margin by the Minister.

(b) a lower antidumping duty if the Minister determines that such lower duty will be sufficient to eliminate the injury determined.

Section 2(5) provides that the amount of countervailable subsidy is to be in "the prescribed manner". Regulation 22 provides the detailed guidelines on calculation of countervailable subsidy.

Section 3(2) provides that the amount of countervailing duty to be imposed shall be:

(a) equal to the countervailable subsidy determined to be provided with respect to the subject goods;
(b) a lower countervailing duty if the Minister determines that such lower duty is sufficient to eliminate the injury determined.[42]

Under Section 42, no goods are to be subject to both antidumping and countervailing duties to compensate for the same situation of dumping and export subsidization.

Section 33 provides for currency conversions. The date of sale, where appropriate, is to be the date of the contract, purchase order, order confirmation or invoice, as determined by the Minister as that which establishes the material terms of the sale of the exported goods.[43] Where a forward rate of exchange is used for goods exported to Singapore, that rate may be used for conversion.[44]

B. Provisional measures

Pending final determination of either a countervailable subsidy or antidumping action, the Minister may impose provisional measures on or after the publication of the notice of affirmative preliminary determination.[45] However, such provisional measures may not be imposed sooner than 60 days from the date of the initiation. Such measures are to take the form of a provisional duty or security. For subsidy actions, the provisional duty is to equal the amount of the estimated countervailable subsidy from the Minister's preliminary determination under Section 7(1).[46] For antidumping actions, the provisional duty or security is to equal the amount of the dumping margin arising from the Minister's preliminary determination under Section 21(1).[47]

As for duration, for subsidy investigations, such measures must be for "as short a period as possible" and may not exceed four months;[48] for antidumping, it is not to exceed such period as is prescribed.[49] This period is set out in Regulation 12 as not

---

[42] See art. 19 of the Subsidies Agreement. See also reg. 23, on establishing the countervailing duty rate.
[43] Section 33(2).
[44] Section 33(3).
[45] Sections 8 and 22. Allowed under art. 7 of the Antidumping Agreement, and art. 17 of the Subsidies Agreement.
[46] Section 8(3). See art. 17 of the Subsidies Agreement.
[47] Section 22(3). See art. 7 of the Antidumping Agreement.
[48] Section 8(4).
[49] Section 22(4).

exceeding six months. Upon request of "exporters representing a significant percentage of the trade involved", the Minister may allow the period to be nine months.

Further provisions relating to provisional measures may be found in the Regulations.[50]

C. Undertakings

Section 25 of the Act allows the Minister to suspend an investigation if acceptable undertakings are given. These must eliminate the dumping margin or injurious effects, be open to effective monitoring and be found to be in the public interest. The equivalent provision for subsidy investigations is Section 11. In both cases, an affirmative preliminary determination must first have been made.[51]

Under Regulation 14, undertakings are to be offered not later than 60 days before the final determination, except "in extraordinary circumstances".

Sections 11(13) and 25(13) provide that no retroactive assessment may be applied to the subject goods imported prior to the violation of any undertakings.[52]

Regulation 14 contains further details relating to undertakings and the suspension of investigations.

VI. Review—The Role of the Minister and the Tribunal

In accordance with the Antidumping Agreement and the Subsidies Agreement, there is a review mechanism in the Act.[53]

A. Ministerial review

Section 12 gives the Minister power to conduct a review in relation to a countervailable subsidy or countervailing duty, where the circumstances mentioned in the section apply. For antidumping, the equivalent power is given in Section 26. The criteria for such review are, respectively, where:

(a) the amount of countervailable subsidy/the dumping margin has changed substantially;
(b) a refund of the countervailing duty/antidumping duty is appropriate;
(c) the imposition of a countervailing duty/antidumping duty is no longer necessary;
(d) an undertaking is no longer necessary or should be modified;

---

[50] Reg. 12.

[51] See art. 8 of the Antidumping Agreement and art. 18 of the Subsidies Agreement.

[52] Although art. 10 of the Antidumping Agreement and art. 20 of the Subsidies Agreement deal with the issue of retroactivity at some length, the only mentions of retroactivity in the Act are in ss.11(13) and 25(13).

[53] See arts. 11 and 13 of the Antidumping Agreement. Art. 13 requires that review tribunals (which may be judicial, arbitral or administrative) be "independent of the authorities responsible for the determination or review in question". See also art. 23 of the Subsidies Agreement.

(e) a countervailing duty or undertaking/antidumping duty which is required to be terminated under the five-year duration period,[54] should be maintained;

(f) an expedited review is required for exporters who were not previously investigated, or in the case of antidumping, for exporters or producers who did not export the subject goods to Singapore during the period of investigation.

In addition, the Minister must be satisfied that such a review is in the public interest or is required under the Subsidies or Antidumping Agreements. Such a review can only be conducted if the "prescribed period" has lapsed.[55] If the Minister decides to conduct a review, he must publish a notice of initiation of review, as well as allow interested parties an opportunity to provide comments in such review.[56] The review must be completed within the period "prescribed".[57]

Once the Minister has completed the review, he must publish a final determination of the review, stating the reasons therefor.[58]

Further details relating to Ministerial review are found in Regulations 36–40. Regulation 36, in particular, provides that such review is normally to be conducted not earlier than one year after the date of publication of the determination or decision of which the review is sought.[59] Such a review is generally to be completed within 180 days from the date of publication of the initiation of review, but should not extend beyond one year from that date.

An interesting feature is the expedited reviews provided for in Sections 12(1)(f) and 26(1)(f) in relation to countervailing and antidumping duties respectively.[60]

B. Tribunal Review

The Tribunal may review a final determination or a final review determination made by the Minister. In conducting reviews, the Tribunal has the discretion to determine the procedure to be followed, is not bound to act in a formal manner and is not bound by the rules of evidence.[61]

Section 13 gives the Antidumping Tribunal the power to review the Minister's decision in relation to subsidy matters. The equivalent provision relating to antidumping is Section 27. In both cases, the application for Tribunal review must be

---

[54] Countervailing duties are not to be collected on imports made five years after the date of publication of the notice of final determination—s. 12(7). Antidumping duties are not to be collected on imports made after the date of the notice of final determination—s. 26(7). Undertakings automatically lapse with respect to imports made after five years from the date of publication of the notice of suspension of investigation.

[55] Sections 12(2) and 26(2).

[56] Sections 12(3) and 26(3).

[57] Sections 12(4) and 26(4).

[58] Sections 12(5) and 26(5).

[59] This is subject to the provisions on expedited reviews in regs. 37 and 38.

[60] See also regs. 37 and 38 on the elaboration of these procedures. For extension and refund reviews, see regs. 39 and 40 respectively.

[61] Section 30(9).

filed within 30 days of the date of the notice of final determination or of the date of publication of the final review determination made by the Minister.

These Sections give the Tribunal rather limited powers. Upon review of a matter, the Tribunal may only affirm the Minister's decision or remit the matter to the Minister for reconsideration. This means that the ultimate decision in a review resulting in such remission lies not with the Tribunal, but with the Minister. Where the Minister, upon reconsideration, adopts his original stance, the party seeking the review has to accept the decision.[62]

VII. Access to Information and Confidentiality

Section 34 contains the requirements of confidentiality found in the Antidumping Agreement.[63] Parties are to be given timely opportunities by the Minister, whenever practicable, to see non-confidential information which is relevant to the presentation of their case. Throughout any countervailing or antidumping investigation or review, all interested parties are to have a full opportunity to present all evidence they consider relevant and for the defence of their interests.[64] Further, interested parties are to be provided, on request, with timely opportunities to meet parties with adverse interests so that opposing views may be presented and rebuttal arguments offered.[65]

Section 34(5) provides that such opportunities have to take account of the need to preserve confidentiality and of convenience to the parties. Section 35 further provides that information which is by its nature confidential or which is provided on a confidential basis to the Minister is to be treated as such by the Minister, the Tribunal and any person having access to the information. Such confidential information may not be disclosed without the specific, written permission of the party submitting the information. However, non-confidential summaries which are "sufficient in detail to permit reasonable understanding of the substance of the confidential information" are required to be furnished by the parties.[66] Where this is not possible, parties are to submit a statement of reasons.[67]

Under Section 37, where any interested party refuses access to, or does not otherwise provide, necessary information within a reasonable period, or significantly impedes an investigation or review, preliminary and final determinations may be made on the basis of facts available.

A final provision to note is Section 45, which obliges any person who has access to any statement, accounts, record, correspondence, document information or material obtained pursuant to the Act not to disclose it unless authorized by the Minister or for

---

[62] The powers of the Malaysian counterpart Tribunal are not so delimited. See ss. 14 and 29 of the Malaysia Act.

[63] The Section contains clauses from art. 6 of the Antidumping Agreement.

[64] Section 34(1) and (3).

[65] Section 34(4). See also regs. 41–46.

[66] Section 35(5).

[67] Section 35(6). See also s. 35(7).

the purposes of the Act. Failure to observe such secrecy is an offence and carries a fine of S$5,000, a term of imprisonment not exceeding a year or both.

VIII. Public Interest Element

A feature of the Act is the inclusion of public interest as criterion for certain decisions by the Minister, such as whether to initiate an investigation. This applies to both subsidy and antidumping investigations. Provisions containing the public interest factor are Sections 4(3)(b), 4(4), 9(4), 11(1)(c), 12(1), 19(3)(b), 19(4), 23(4), 25(1)(c) and 26(1).[68]

The Act does not define or elaborate on "public interest", which leaves the matter within the discretion of the Minister. This must be viewed in the light of the objective of the Act (and, indeed, the Antidumping Agreement), namely protection of the domestic industry, where any subsidy or antidumping is alleged, or determined, to exist. The language of the Act bears this out, in linking both mischiefs to material injury to the domestic industry. Therefore, any investigation and action relating to it, has to be viewed in relation to the relevant domestic industry. The public interest factor would, however, allow the Minister to have discretion to take into account other considerations. What these are is not spelt out in the Act. The Antidumping Agreement does provide other matters which are to be considered,[69] which are not expressly spelt out in the Act. Arguably, such matters, *inter alia*, could also fall within the "public interest" factor.

The general position of the authorities has been stated as follows:

> "the relevant authorities will carefully scrutinize any complaints made by our domestic producers that they are being injured by subsidized or dumped goods before taking action to impose any anti-dumping or countervailing measures."[70]

IX. Miscellaneous

Section 39 allows the Minister to take action where there is a subsidy or antidumping from a country which has no applicable international obligations with Singapore. This would apply to countries which are not party to the WTO Agreements. However, the Act does not shed light on what other "applicable international obligations" refers to.

X. Conclusion

The Act is a welcome update of Singapore's antidumping and subsidy law. It brings

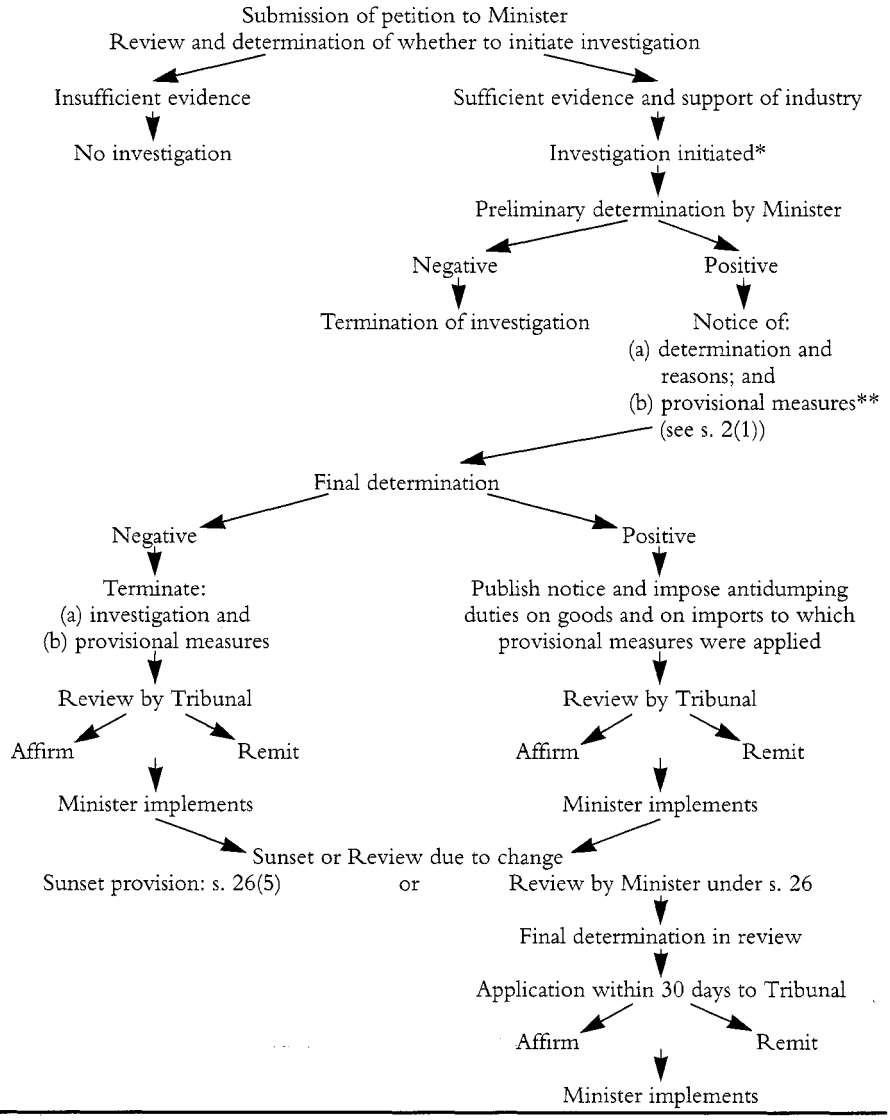
---

[68] The public interest element also appears in the Malaysia Act.
[69] Such as the provisions relating to determination of material injury in art. 3.5 and 3.7.
[70] As note 4, above, p. 585.

the law into compliance with the standards and requirements which were adopted by the WTO. It introduces a clear administrative structure for handling petitions in the form of the Minister's powers given by the Act and the Antidumping Tribunal. Finally, the Act extends the protection of the WTO-negotiated clauses to the domestic industry.

However, domestic industries may not yet be fully familiar with their rights under the Act. With time, perhaps this will change. For now, the foundations have been laid for an effective, WTO-compliant system of investigation and redress, and procedures.

APPENDIX 1—ANTIDUMPING INVESTIGATIONS



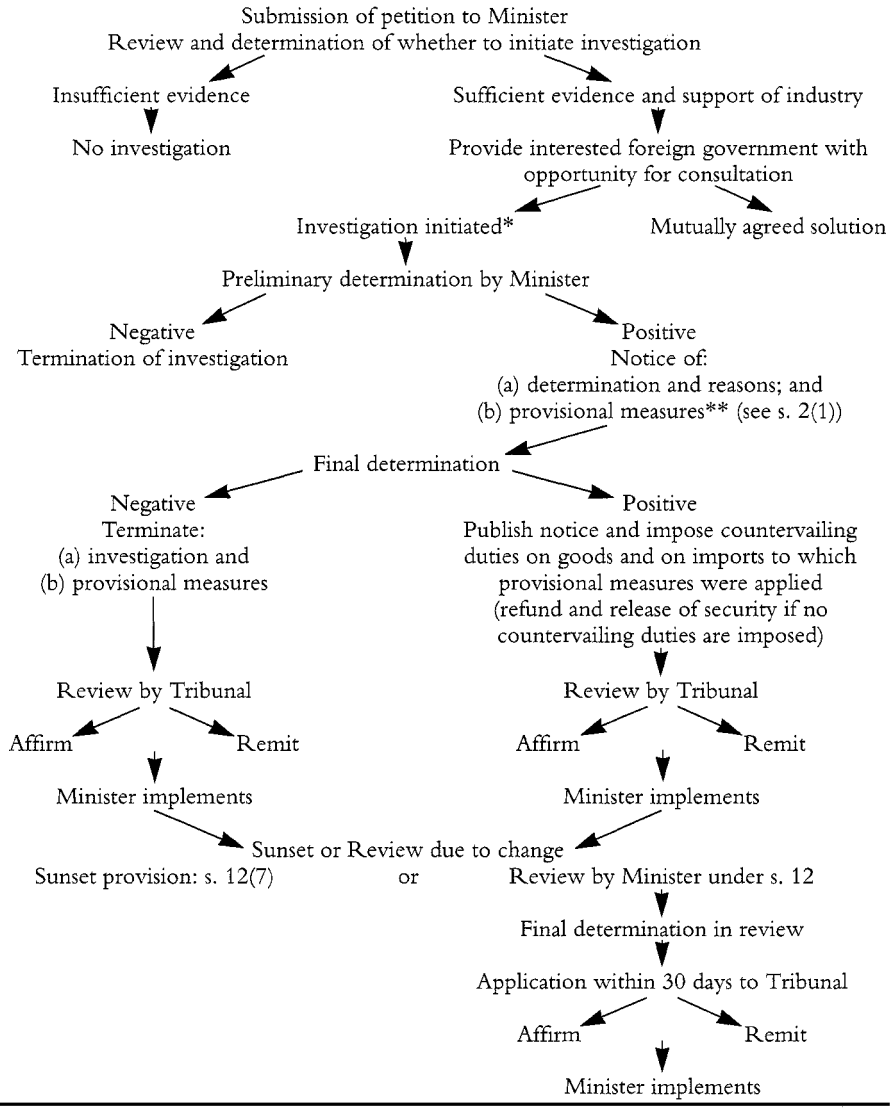
* Where the Minister initiates an investigation, procedures start from this point.

** Duties can be imposed prior to provisional measures under s. 23(8).

Notes: (1) All antidumping investigations are to be completed within one year, except in special circumstances under s. 20, but in no case in more than 18 months after initiation.

(2) Other reasons for which an investigation may be terminated are:
   (a) petitioner withdraws;
   (b) Minister determines that it is in the public interest to terminate;
   (c) *de minimis*—where the margin of dumping or volume of subsidized imports or injury is negligible.

APPENDIX 2—SUBSIDY INVESTIGATIONS



* Where the Minister initiates an investigation, procedures start from this point.

** Duties can be imposed prior to provisional measures under s. 9(8).

Notes: (1) All subsidy investigations are to be completed within one year, except in special circumstances under s. 6, but in no case in more than 18 months after initiation.

(2) Other reasons for which an investigation may be terminated are:
   (a) petitioner withdraws;
   (b) Minister determines that it is in the public interest to terminate;
   (c) *de minimis*—where the countervailing duty or volume of subsidized imports or injury is negligible.